

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

EDWARD TAVARES,
Petitioner

v.

Civil Action No. 04-CV-40059-NMG

STEVEN O'BRIEN¹
respondent

**MOTION TO REQUIRE PETITIONER TO SUBMIT A PETITION IN
COMPLIANCE WITH 28 U.S.C. § 2254 RULE 2(c)**

The respondent, Steven O'Brien, respectfully requests that the Court require the petitioner, Edward Tavares, to submit a petition that complies with Rule 2(c) of the Rules Governing Section 2254 Cases in the United States District Courts (the "Habeas Rules"), including ordering him to use the form annexed to the rules. Rule 2(c) requires federal habeas petitioners to submit petitions in a prescribed form, include specific information, identify the grounds for relief, and be signed under oath. See Rule 2(c).

Rather than using the form petition required by Rule 2(c), Mr. Tavares has submitted a thirty-seven page "petition" that more closely approximates a memorandum of law than it does a petition for habeas corpus relief. In its current form, it is impossible to respond to the "petition" in the form of an answer, see Rule 5, or other responsive pleading. The respondent therefore respectfully requests the Court order Mr. Tavares to re-submit his petition pursuant to Rule 2(c), including ordering him to use the form annexed to the rules.

In support of the motion, the respondent relies on the accompanying

¹ The petitioner mistakenly named the Commonwealth of Massachusetts as the respondent instead of the superintendent of the institution where he is incarcerated, here Steven O'Brien. See 28 U.S.C. § 2254 Rule 2(a).

memorandum of law.

Respectfully submitted,

THOMAS F. REILLY
Attorney General

/s/ Daniel I. Smulow
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Date: May 18, 2004

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the above document was served on Edward Tavares, pro se, N.C.C.I. - Gardner, P.O. Box 466, 500 Colony Road, Gardner, MA 01440, by first class mail, postage prepaid, on May 18, 2004.

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